

Part 3

Perfection and Priority

70A-9a-301 Law governing perfection and priority of security interests.

Except as otherwise provided in Sections 70A-9a-303 through 70A-9a-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.
- (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.
- (3) Except as otherwise provided in Subsection (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
 - (a) perfection of a security interest in the goods by filing a fixture filing;
 - (b) perfection of a security interest in timber to be cut; and
 - (c) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.
- (4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

Amended by Chapter 42, 2006 General Session

70A-9a-302 Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

Enacted by Chapter 252, 2000 General Session

70A-9a-303 Law governing perfection and priority of security interests in goods covered by a certificate of title.

- (1) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.
- (2) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.
- (3) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

Enacted by Chapter 252, 2000 General Session

70A-9a-304 Law governing perfection and priority of security interests in deposit accounts.

- (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.
- (2) The following rules determine a bank's jurisdiction for purposes of this part:
 - (a) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is the bank's jurisdiction.
 - (b) If Subsection (2)(a) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
 - (c) If neither Subsection (2)(a) nor Subsection (2)(b) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
 - (d) If none of the preceding subsections applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.
 - (e) If none of the preceding subsections applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

Enacted by Chapter 252, 2000 General Session

70A-9a-305 Law governing perfection and priority of security interests in investment property.

- (1) Except as otherwise provided in Subsection (3), the following rules apply:
 - (a) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.
 - (b) The local law of the issuer's jurisdiction as specified in Subsection 70A-8-109(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.
 - (c) The local law of the securities intermediary's jurisdiction as specified in Subsection 70A-8-109(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.
 - (d) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.
- (2) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:
 - (a) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is the commodity intermediary's jurisdiction.
 - (b) If Subsection (2)(a) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the

agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

- (c) If neither Subsection (2)(a) nor Subsection (2)(b) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
 - (d) If none of the Subsections (2)(a) through (c) applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.
 - (e) If none of the Subsections (2)(a) through (d) applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.
- (3) The local law of the jurisdiction in which the debtor is located governs:
- (a) perfection of a security interest in investment property by filing;
 - (b) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
 - (c) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

Enacted by Chapter 252, 2000 General Session

70A-9a-306 Law governing perfection and priority of security interests in letter-of-credit rights.

- (1) Subject to Subsection (3), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.
- (2) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 70A-5-116.
- (3) This section does not apply to a security interest that is perfected only under Subsection 70A-9a-308(4).

Enacted by Chapter 252, 2000 General Session

70A-9a-307 Location of debtor.

- (1) In this section, "place of business" means a place where a debtor conducts its affairs.
- (2) Except as otherwise provided in this section, the following rules determine a debtor's location:
 - (a) A debtor who is an individual is located at the individual's principal residence.
 - (b) A debtor that is an organization and has only one place of business is located at its place of business.
 - (c) A debtor that is an organization and has more than one place of business is located at its chief executive office.
- (3) Subsection (2) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If Subsection (2) does not apply, the debtor is located in the District of Columbia.

- (4) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by Subsections (2) and (3).
- (5) A registered organization that is organized under the law of a state is located in that state.
- (6) Except as otherwise provided in Subsection (9), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:
 - (a) in the state that the law of the United States designates, if the law designates a state of location;
 - (b) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or
 - (c) in the District of Columbia, if neither Subsection (6)(a) nor Subsection (6)(b) applies.
- (7) A registered organization continues to be located in the jurisdiction specified by Subsection (5) or (6) notwithstanding:
 - (a) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or
 - (b) the dissolution, winding up, or cancellation of the existence of the registered organization.
- (8) The United States is located in the District of Columbia.
- (9) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.
- (10) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.
- (11) This section applies only for purposes of this part.

Amended by Chapter 225, 2013 General Session

70A-9a-308 When security interest or agricultural lien is perfected -- Continuity of perfection.

- (1) Except as otherwise provided in this section and Section 70A-9a-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 70A-9a-310 through 70A-9a-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.
- (2) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 70A-9a-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.
- (3) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this chapter and is later perfected by another method under this chapter, without an intermediate period when it was unperfected.
- (4) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.
- (5) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.
- (6) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

- (7) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

Enacted by Chapter 252, 2000 General Session

70A-9a-309 Security interest perfected upon attachment.

The following security interests are perfected when they attach:

- (1) a purchase-money security interest in consumer goods, except as otherwise provided in Subsection 70A-9a-311(2) with respect to consumer goods that are subject to a statute or treaty described in Subsection 70A-9a-311(1);
- (2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
- (3) a sale of a payment intangible;
- (4) a sale of a promissory note;
- (5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) a security interest arising under Section 70A-2-401 or 70A-2-505 or Subsection 70A-2-711(3) or 70A-2a-508(5), until the debtor obtains possession of the collateral;
- (7) a security interest of a collecting bank arising under Section 70A-4-210;
- (8) a security interest of an issuer or nominated person arising under Section 70A-5-118;
- (9) a security interest arising in the delivery of a financial asset under Subsection 70A-9a-206(3);
- (10) a security interest in investment property created by a broker or securities intermediary;
- (11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) a security interest created by an assignment of a beneficial interest in a decedent's estate.

Enacted by Chapter 252, 2000 General Session

70A-9a-310 When filing required to perfect security interest or agricultural lien -- Security interests and agricultural liens to which filing provisions do not apply.

- (1) Except as otherwise provided in Subsection (2) and Subsection 70A-9a-312(2), a financing statement must be filed to perfect all security interests and agricultural liens.
- (2) The filing of a financing statement is not necessary to perfect a security interest:
 - (a) that is perfected under Subsection 70A-9a-308(4), (5), (6), or (7);
 - (b) that is perfected under Section 70A-9a-309 when it attaches;
 - (c) in property subject to a statute, regulation, or treaty described in Subsection 70A-9a-311(1);
 - (d) in goods in possession of a bailee which is perfected under Subsection 70A-9a-312(4)(a) or (b);
 - (e) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under Subsection 70A-9a-312(5), (6), or (7);
 - (f) in collateral in the secured party's possession under Section 70A-9a-313;
 - (g) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 70A-9a-313;
 - (h) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 70A-9a-314;

- (i) in proceeds which is perfected under Section 70A-9a-315; or
 - (j) that is perfected under Section 70A-9a-316.
- (3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Amended by Chapter 42, 2006 General Session

70A-9a-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

- (1) Except as otherwise provided in Subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
- (a) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Subsection 70A-9a-310(1);
 - (b) Section 41-1a-601; or
 - (c) a statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.
- (2) Compliance with the requirements of a statute, regulation, or treaty described in Subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in Subsection (4), Section 70A-9a-313, and Subsections 70A-9a-316(4) and (5) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in Subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.
- (3) Except as otherwise provided in Subsection (4) and Subsections 70A-9a-316(4) and (5), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in Subsection (1) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.
- (4) During any period in which collateral subject to a statute specified in Subsection (1)(b) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

Amended by Chapter 225, 2013 General Session

70A-9a-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money -- Perfection by permissive filing -- Temporary perfection without filing or transfer of possession.

- (1) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.
- (2) Except as otherwise provided in Subsections 70A-9a-315(3) and (4) for proceeds:
- (a) a security interest in a deposit account may be perfected only by control under Section 70A-9a-314;

- (b) and except as otherwise provided in Subsection 70A-9a-308(4), a security interest in a letter-of-credit right may be perfected only by control under Section 70A-9a-314; and
 - (c) a security interest in money may be perfected only by the secured party's taking possession under Section 70A-9a-313.
- (3) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:
- (a) a security interest in the goods may be perfected by perfecting a security interest in the document; and
 - (b) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.
- (4) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:
- (a) issuance of a document in the name of the secured party;
 - (b) the bailee's receipt of notification of the secured party's interest; or
 - (c) filing as to the goods.
- (5) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.
- (6) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
- (a) ultimate sale or exchange; or
 - (b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.
- (7) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:
- (a) ultimate sale or exchange; or
 - (b) presentation, collection, enforcement, renewal, or registration of transfer.
- (8) After the 20-day period specified in Subsection (5), (6), or (7) expires, perfection depends upon compliance with this chapter.

Amended by Chapter 42, 2006 General Session

70A-9a-313 When possession by or delivery to secured party perfects security interest without filing.

- (1) Except as otherwise provided in Subsection (2), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 70A-8-301.
- (2) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Subsection 70A-9a-316(4).
- (3) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the

debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

- (a) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
 - (b) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.
- (4) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.
- (5) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 70A-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.
- (6) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.
- (7) If a person acknowledges that it holds possession for the secured party's benefit:
- (a) the acknowledgment is effective under Subsection (3) or Subsection 70A-8-301(1), even if the acknowledgment violates the rights of a debtor; and
 - (b) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.
- (8) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:
- (a) to hold possession of the collateral for the secured party's benefit; or
 - (b) to redeliver the collateral to the secured party.
- (9) A secured party does not relinquish possession, even if a delivery under Subsection (8) violates the rights of a debtor. A person to which collateral is delivered under Subsection (8) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

Amended by Chapter 42, 2006 General Session

70A-9a-314 Perfection by control.

- (1) A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-106, or 70A-9a-107.
- (2) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights, or electronic documents is perfected by control under Section 70A-7a-106, 70A-9a-104, 70A-9a-105, or 70A-9a-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.
- (3) A security interest in investment property is perfected by control under Section 70A-9a-106 from the time the secured party obtains control and remains perfected by control until:
 - (a) the secured party does not have control; and
 - (b) one of the following occurs:
 - (i) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

- (ii) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
- (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Amended by Chapter 42, 2006 General Session

70A-9a-315 Secured party's rights on disposition of collateral and in proceeds.

- (1) Except as otherwise provided in this chapter and in Subsection 70A-2-403(2):
 - (a) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
 - (b) a security interest attaches to any identifiable proceeds of collateral.
- (2) Proceeds that are commingled with other property are identifiable proceeds:
 - (a) if the proceeds are goods, to the extent provided by Section 70A-9a-336; and
 - (b) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this chapter with respect to commingled property of the type involved.
- (3) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.
- (4) A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:
 - (a) the following conditions are satisfied:
 - (i) a filed financing statement covers the original collateral;
 - (ii) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - (iii) the proceeds are not acquired with cash proceeds;
 - (b) the proceeds are identifiable cash proceeds; or
 - (c) the security interest in the proceeds is perfected other than under Subsection (3) when the security interest attaches to the proceeds or within 20 days thereafter.
- (5) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under Subsection (4)(a) becomes unperfected at the later of:
 - (a) when the effectiveness of the filed financing statement lapses under Section 70A-9a-515 or is terminated under Section 70A-9a-513; or
 - (b) the 21st day after the security interest attaches to the proceeds.

Enacted by Chapter 252, 2000 General Session

70A-9a-316 Effect of change in governing law.

- (1) A security interest perfected pursuant to the law of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) remains perfected until the earliest of:
 - (a) the time perfection would have ceased under the law of that jurisdiction;
 - (b) the expiration of four months after a change of the debtor's location to another jurisdiction; or
 - (c) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.
- (2) If a security interest described in Subsection (1) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other

- jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
- (3) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:
 - (a) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
 - (b) thereafter the collateral is brought into another jurisdiction; and
 - (c) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.
 - (4) Except as otherwise provided in Subsection (5), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.
 - (5) A security interest described in Subsection (4) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Subsection 70A-9a-311(2) or Section 70A-9a-313 are not satisfied before the earlier of:
 - (a) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or
 - (b) the expiration of four months after the goods had become so covered.
 - (6) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:
 - (a) the time the security interest would have become unperfected under the law of that jurisdiction; or
 - (b) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.
 - (7) If a security interest described in Subsection (6) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
 - (8) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:
 - (a) A financing statement filed before the change pursuant to the law of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.
 - (b) If a security interest perfected by a financing statement that is effective under Subsection (8)
 - (a) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have been ineffective under the law of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

- (9) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) and the new debtor is located in another jurisdiction, the following rules apply:
- (a) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Subsection 70A-9a-203(4), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.
 - (b) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have been ineffective under the law of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Amended by Chapter 225, 2013 General Session

70A-9a-317 Interests that take priority over or take free of security interest or agricultural lien.

- (1) A security interest or agricultural lien is subordinate to the rights of:
- (a) a person entitled to priority under Section 70A-9a-322; and
 - (b) except as otherwise provided in Subsection (5), a person that becomes a lien creditor before the earlier of the time:
 - (i) the security interest or agricultural lien is perfected; or
 - (ii) one of the conditions specified in Subsection 70A-9a-203(2)(c) is met and a financing statement covering the collateral is filed.
- (2) Except as otherwise provided in Subsection (5), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (3) Except as otherwise provided in Subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (4) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.
- (5) Except as otherwise provided in Sections 70A-9a-320 and 70A-9a-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Amended by Chapter 225, 2013 General Session

70A-9a-318 No interest retained in right to payment that is sold -- Rights and title of seller of account or chattel paper with respect to creditors and purchasers.

- (1) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.
- (2) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

Enacted by Chapter 252, 2000 General Session

70A-9a-319 Rights and title of consignee with respect to creditors and purchasers.

- (1) Except as otherwise provided in Subsection (2), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.
- (2) For purposes of determining the rights of a creditor of a consignee, law other than this chapter determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

Enacted by Chapter 252, 2000 General Session

70A-9a-320 Buyer of goods.

- (1) Except as otherwise provided in Subsection (5), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.
- (2) Except as otherwise provided in Subsection (5), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:
 - (a) without knowledge of the security interest;
 - (b) for value;
 - (c) primarily for the buyer's personal, family, or household purposes; and
 - (d) before the filing of a financing statement covering the goods.
- (3) To the extent that it affects the priority of a security interest over a buyer of goods under Subsection (2), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Subsections 70A-9a-316(1) and (2).
- (4) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.
- (5) Subsections (1) and (2) do not affect a security interest in goods in the possession of the secured party under Section 70A-9a-313.
- (6)
 - (a) Notwithstanding Subsection (1), a secured party may not enforce a security interest in farm products against a buyer, commission merchant, or selling agent who purchases or sells farm products in the ordinary course of business from or for a person engaged in farming operations unless the secured party has complied with the rules issued by the Division of Corporations and Commercial Code under Subsection (6)(b).

- (b) The Division of Corporations and Commercial Code shall issue the rules necessary to implement a central filing system that will conform to the requirements of the Food Security Act of 1985, P.L. 99-198, as now enacted or as it may be hereafter amended.

Enacted by Chapter 252, 2000 General Session

70A-9a-321 Licensee of general intangible and lessee of goods in ordinary course of business.

- (1) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.
- (2) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.
- (3) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

Enacted by Chapter 252, 2000 General Session

70A-9a-322 Priorities among conflicting security interests in and agricultural liens on same collateral.

- (1) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:
 - (a) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.
 - (b) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
 - (c) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.
- (2) For the purposes of Subsection (1)(a):
 - (a) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and
 - (b) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.
- (3) Except as otherwise provided in Subsection (6), a security interest in collateral which qualifies for priority over a conflicting security interest under Section 70A-9a-327, 70A-9a-328, 70A-9a-329, 70A-9a-330, or 70A-9a-331 also has priority over a conflicting security interest in:
 - (a) any supporting obligation for the collateral; and
 - (b) proceeds of the collateral if:
 - (i) the security interest in proceeds is perfected;

- (ii) the proceeds are cash proceeds or of the same type as the collateral; and
 - (iii) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.
- (4) Subject to Subsection (5) and except as otherwise provided in Subsection (6), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.
- (5) Subsection (4) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.
- (6) Subsections (1) through (5) are subject to:
- (a) Subsection (7) and the other provisions of this part;
 - (b) Section 70A-4-210 with respect to a security interest of a collecting bank;
 - (c) Section 70A-5-118 with respect to a security interest of an issuer or nominated person; and
 - (d) Section 70A-9a-110 with respect to a security interest arising under Chapter 2, Uniform Commercial Code - Sales, or Chapter 2a, Uniform Commercial Code - Leases.
- (7) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

Enacted by Chapter 252, 2000 General Session

70A-9a-323 Future advances.

- (1) Except as otherwise provided in Subsection (3), for purposes of determining the priority of a perfected security interest under Subsection 70A-9a-322(1)(a), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:
- (a) is made while the security interest is perfected only:
 - (i) under Section 70A-9a-309 when it attaches; or
 - (ii) temporarily under Subsection 70A-9a-312(5), (6), or (7); and
 - (b) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 70A-9a-309 or Subsection 70A-9a-312(5), (6), or (7).
- (2) Except as otherwise provided in Subsection (3), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:
- (a) without knowledge of the lien; or
 - (b) pursuant to a commitment entered into without knowledge of the lien.
- (3) Subsections (1) and (2) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.
- (4) Except as otherwise provided in Subsection (5), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:
- (a) the time the secured party acquires knowledge of the buyer's purchase; or
 - (b) 45 days after the purchase.
- (5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

- (6) Except as otherwise provided in Subsection (7), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:
- (a) the time the secured party acquires knowledge of the lease; or
 - (b) 45 days after the lease contract becomes enforceable.
- (7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Enacted by Chapter 252, 2000 General Session

70A-9a-324 Priority of purchase-money security interests.

- (1) Except as otherwise provided in Subsection (7), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 70A-9a-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.
- (2) Subject to Subsection (3) and except as otherwise provided in Subsection (7), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 70A-9a-330, and, except as otherwise provided in Section 70A-9a-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:
- (a) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
 - (b) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
 - (c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
 - (d) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.
- (3) Subsections (2)(b) through (d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:
- (a) if the purchase-money security interest is perfected by filing, before the date of the filing; or
 - (b) if the purchase-money security interest is temporarily perfected without filing or possession under Subsection 70A-9a-312(6), before the beginning of the 20-day period thereunder.
- (4) Subject to Subsection (5) and except as otherwise provided in Subsection (7), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 70A-9a-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:
- (a) the purchase-money security interest is perfected when the debtor receives possession of the livestock;
 - (b) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
 - (c) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

- (d) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.
- (5) Subsections (4)(b) through (d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:
 - (a) if the purchase-money security interest is perfected by filing, before the date of the filing; or
 - (b) if the purchase-money security interest is temporarily perfected without filing or possession under Subsection 70A-9a-312(6), before the beginning of the 20-day period thereunder.
- (6) Except as otherwise provided in Subsection (7), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 70A-9a-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.
- (7) If more than one security interest qualifies for priority in the same collateral under Subsection (1), (2), (4), or (6):
 - (a) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
 - (b) in all other cases, Subsection 70A-9a-322(1) applies to the qualifying security interests.

Enacted by Chapter 252, 2000 General Session

70A-9a-325 Priority of security interests in transferred collateral.

- (1) Except as otherwise provided in Subsection (2), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:
 - (a) the debtor acquired the collateral subject to the security interest created by the other person;
 - (b) the security interest created by the other person was perfected when the debtor acquired the collateral; and
 - (c) there is no period thereafter when the security interest is unperfected.
- (2) Subsection (1) subordinates a security interest only if the security interest:
 - (a) otherwise would have priority solely under Subsection 70A-9a-322(1) or Section 70A-9a-324; or
 - (b) arose solely under Subsection 70A-2-711(3) or 70A-2a-508(5).

Enacted by Chapter 252, 2000 General Session

70A-9a-326 Priority of security interests created by new debtor.

- (1) Subject to Subsection (2), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of Subsection 70A-9a-316(9)(a) or Section 70A-9a-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.
- (2) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in Subsection (1). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Amended by Chapter 225, 2013 General Session

70A-9a-327 Priority of security interests in deposit account.

The following rules govern priority among conflicting security interests in the same deposit account:

- (1) A security interest held by a secured party having control of the deposit account under Section 70A-9a-104 has priority over a conflicting security interest held by a secured party that does not have control.
- (2) Except as otherwise provided in Subsections (3) and (4), security interests perfected by control under Section 70A-9a-314 rank according to priority in time of obtaining control.
- (3) Except as otherwise provided in Subsection (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.
- (4) A security interest perfected by control under Subsection 70A-9a-104(1)(c) has priority over a security interest held by the bank with which the deposit account is maintained.

Enacted by Chapter 252, 2000 General Session

70A-9a-328 Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

- (1) A security interest held by a secured party having control of investment property under Section 70A-9a-106 has priority over a security interest held by a secured party that does not have control of the investment property.
- (2) Except as otherwise provided in Subsections (3) and (4), conflicting security interests held by secured parties each of which has control under Section 70A-9a-106 rank according to priority in time of:
 - (a) if the collateral is a security, obtaining control;
 - (b) if the collateral is a security entitlement carried in a securities account and:
 - (i) if the secured party obtained control under Subsection 70A-8-105(4)(a), the secured party's becoming the person for which the securities account is maintained;
 - (ii) if the secured party obtained control under Subsection 70A-8-105(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or
 - (iii) if the secured party obtained control through another person under Subsection 70A-8-105(4)(c), the time on which priority would be based under this subsection if the other person were the secured party; or
 - (c) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in Subsection 70A-9a-106(2)(b) with respect to commodity contracts carried or to be carried with the commodity intermediary.
- (3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.
- (4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

- (5) A security interest in a certificated security in registered form which is perfected by taking delivery under Subsection 70A-9a-313(1) and not by control under Section 70A-9a-314 has priority over a conflicting security interest perfected by a method other than control.
- (6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Section 70A-9a-106 rank equally.
- (7) In all other cases, priority among conflicting security interests in investment property is governed by Sections 70A-9a-322 and 70A-9a-323.

Enacted by Chapter 252, 2000 General Session

70A-9a-329 Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

- (1) A security interest held by a secured party having control of the letter-of-credit right under Section 70A-9a-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.
- (2) Security interests perfected by control under Section 70A-9a-314 rank according to priority in time of obtaining control.

Enacted by Chapter 252, 2000 General Session

70A-9a-330 Priority of purchaser of chattel paper or instrument.

- (1) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:
 - (a) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 70A-9a-105; and
 - (b) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.
- (2) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 70A-9a-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.
- (3) Except as otherwise provided in Section 70A-9a-327, a purchaser having priority in chattel paper under Subsection (1) or (2) also has priority in proceeds of the chattel paper to the extent that:
 - (a) Section 70A-9a-322 provides for priority in the proceeds; or
 - (b) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.
- (4) Except as otherwise provided in Subsection 70A-9a-331(1), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.
- (5) For purposes of Subsections (1) and (2), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.
- (6) For purposes of Subsections (2) and (4), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the

chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

Enacted by Chapter 252, 2000 General Session

70A-9a-331 Priority of rights of purchasers of instruments, documents, and securities under other chapters -- Priority of interests in financial assets and security entitlements under Chapter 8, Uniform Commercial Code -- Investment Securities.

- (1) This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapter 3, Uniform Commercial Code - Negotiable Instruments, Chapter 7a, Uniform Commercial Code - Documents of Title, and Chapter 8, Uniform Commercial Code - Investment Securities.
- (2) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 8, Uniform Commercial Code - Investment Securities.
- (3) Filing under this chapter does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in Subsections (1) and (2).

Amended by Chapter 42, 2006 General Session

70A-9a-332 Transfer of money -- Transfer of funds from deposit account.

- (1) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.
- (2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

Enacted by Chapter 252, 2000 General Session

70A-9a-333 Priority of certain liens arising by operation of law.

- (1) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:
 - (a) which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;
 - (b) which is created by statute or rule of law in favor of the person; and
 - (c) whose effectiveness depends on the person's possession of the goods.
- (2) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

Enacted by Chapter 252, 2000 General Session

70A-9a-334 Priority of security interests in fixtures and crops.

- (1) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

- (2) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.
- (3) In cases not governed by Subsections (4) through (8), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.
- (4) Except as otherwise provided in Subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:
 - (a) the security interest is a purchase-money security interest;
 - (b) the interest of the encumbrancer or owner arises before the goods become fixtures; and
 - (c) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.
- (5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:
 - (a) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:
 - (i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
 - (ii) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
 - (b) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:
 - (i) factory or office machines;
 - (ii) equipment that is not primarily used or leased for use in the operation of the real property; or
 - (iii) replacements of domestic appliances that are consumer goods;
 - (c) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or
 - (d) the security interest is:
 - (i) created in a manufactured home in a manufactured-home transaction; and
 - (ii) perfected pursuant to a statute described in Subsection 70A-9a-311(1)(b).
- (6) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:
 - (a) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
 - (b) the debtor has a right to remove the goods as against the encumbrancer or owner.
- (7) The priority of the security interest under Subsection (6)(b) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.
- (8) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in Subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.
- (9) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

Amended by Chapter 132, 2001 General Session

70A-9a-335 Accessions.

- (1) A security interest may be created in an accession and continues in collateral that becomes an accession.
- (2) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.
- (3) Except as otherwise provided in Subsection (4), the other provisions of this part determine the priority of a security interest in an accession.
- (4) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Subsection 70A-9a-311(2).
- (5) After default, subject to Part 6, Default, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.
- (6) A secured party that removes an accession from other goods under Subsection (5) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Enacted by Chapter 252, 2000 General Session

70A-9a-336 Commingled goods.

- (1) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.
- (2) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.
- (3) If collateral becomes commingled goods, a security interest attaches to the product or mass.
- (4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under Subsection (3) is perfected.
- (5) Except as otherwise provided in Subsection (6), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under Subsection (3).
- (6) If more than one security interest attaches to the product or mass under Subsection (3), the following rules determine priority:
 - (a) A security interest that is perfected under Subsection (4) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.
 - (b) If more than one security interest is perfected under Subsection (4), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

Enacted by Chapter 252, 2000 General Session

70A-9a-337 Priority of security interests in goods covered by certificate of title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to

the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

- (1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and
- (2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Subsection 70A-9a-311(2), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Enacted by Chapter 252, 2000 General Session

70A-9a-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Subsection 70A-9a-516(2)(e) which is incorrect at the time the financing statement is filed:

- (1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and
- (2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Amended by Chapter 42, 2006 General Session

70A-9a-339 Priority subject to subordination.

This chapter does not preclude subordination by agreement by a person entitled to priority.

Enacted by Chapter 252, 2000 General Session

70A-9a-340 Effectiveness of right of recoupment or set-off against deposit account.

- (1) Except as otherwise provided in Subsection (3), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.
- (2) Except as otherwise provided in Subsection (3), the application of this chapter to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.
- (3) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under Subsection 70A-9a-104(1)(c), if the set-off is based on a claim against the debtor.

Enacted by Chapter 252, 2000 General Session

70A-9a-341 Bank's rights and duties with respect to deposit account.

Except as otherwise provided in Subsection 70A-9a-340(3), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

- (1) the creation, attachment, or perfection of a security interest in the deposit account;
- (2) the bank's knowledge of the security interest; or
- (3) the bank's receipt of instructions from the secured party.

Enacted by Chapter 252, 2000 General Session

70A-9a-342 Bank's right to refuse to enter into or disclose existence of control agreement.

This chapter does not require a bank to enter into an agreement of the kind described in Subsection 70A-9a-104(1)(b), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

Enacted by Chapter 252, 2000 General Session